

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
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(240) 777-6600**

**CASE NO. A-6620**

**PETITION OF ADRIAAN CARTER**

**OPINION OF THE BOARD  
(Opinion Adopted June 12, 2019)  
(Effective Date of Opinion: June 19, 2019)**

Case No. A-6620 is an application for a variance needed for construction of a proposed second story addition over an existing house. The proposed construction requires a variance of five (5) feet as it is within twenty-five (25) feet of the front lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on June 12, 2019. Petitioner Adriaan Carter appeared at the hearing, represented by Soo Lee-Cho, Esquire.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1.     The subject property is Lot 26 and Part of Lot 27, Block 2, Cabin John Park Subdivision, located at 8115 Riverside Avenue, Cabin John, Maryland 20818, in the R-90 Zone. The subject property is comprised of two lots that are the "last two lots before Riverside Avenue dead ends," and that together total 19,000 square feet. See Exhibit 3.
2.     The Statement of Justification ("Statement"), in the record at Exhibit 3, describes the subject property as "fairly isolated from its neighbors," elaborating on that as follows:

...To the west, the neighboring property's access is from a different road (Little Leigh Court) and is heavily buffered from the subject property. There is a vacant,

mostly wooded lot, that separates the subject property from its closest neighbor to the east. Across Riverside Avenue to the south, there is both topography and landscaping that buffers the subject site from MacArthur Boulevard. The closest neighbor is to the rear, or north of the subject property, but that neighbor is also buffered by significant landscaping. A stream runs through the property at the eastern side.

See Exhibit 3. As a result, the Statement asserts that the grant of the variance will not be adverse to the use or enjoyment of abutting neighbors, noting that even with the proposed construction, the property is "still secluded and well buffered from its neighbors."

3. The house on the subject property was built in 2000 after the Board granted the Petitioner's grandmother a variance of 21.833 feet from the (then-required) established front building line setback of 30.833 feet. See Exhibits 3 and 7 (BOA Case No. A-5135). In that case, the Board found that "[t]he severe slope of the lot, the existing stream and the WSSC easement severely restrict the buildable area and create difficulties in the siting of any new construction." As a result, the Board in that case found that "the strict application of the setback requirements would result in practical difficulty to the applicant if the variance is not granted," that "the variance requested is the minimum reasonably necessary to accomplish the proposed project" and could be granted without impairment to the General Plan, and that "the construction of a new single-family dwelling located beyond the setback, as proposed herein, will not be detrimental to the use and enjoyment of adjoining properties." See Exhibit 7. The Statement submitted with the current variance application, in the record at Exhibit 3, explains that:

The variance approval in Case No. A-5135 allowed the house to be located 9' from the front property line because it considered the portion of the structure that was closest to the front lot line, i.e. the porch. The main portion of the house, however, is setback 19' from the lot line. The "western wing" of the house where the presently proposed second-story addition would be constructed is set back even further, at 25' from the lot line.

4. The Statement notes that when the existing house was built, "cost prohibited completion of this corner," referring to the western wing, and that the Petitioner would like to complete his grandmother's original plan for this house. It indicates that the "proposed second floor addition will be located flush with the existing first floor western wing of the house." See Exhibit 3.

The Statement describes the proposed construction as a "second-story addition on the same footprint as the existing first floor wing along the western side of the house." It notes that "[t]he location of this addition is both in line with the existing building and the existing pattern of the neighborhood." See Exhibits 3 and 4(a).

5. The Statement indicates that Section 59-7.3.2.E.2.a.i and Section 59-7.3.2.E.2.a.iii of the Zoning Ordinance apply to this case, stating that “[t]he subject property is significantly limited in terms of where it can build/expand by unusual topographical conditions and environmentally sensitive features that exist on the property, i.e., steep slopes and stream.” It notes that the proposed construction “mitigates against any further impact to those environmental features and constitutes the least intrusive approach to expanding much needed living space because the addition will be located directly on top of the existing first floor footprint. In other words, the existing footprint of the house will not be changed.” The Statement includes a reproduction of Exhibit 4 from Case No. A-5135, which “shows the steep slopes and stream that cuts through the property, significantly limiting where any new improvements can be sited.” See Exhibit 3.

The Statement notes that the Petitioner inherited this home “which was built within the front setback due to topographic limitations inherent to the property,” and thus is not responsible for the unique conditions of the property. It further indicates that the requested variance is the minimum needed to allow an addition “without exceeding the existing first floor footprint.”

6. The Statement states that the grant of the requested variance will not be impair the intent and integrity of the applicable Bethesda Chevy Chase Master Plan, noting that “[p]age 70 of the 1990 Plan states that the ‘unique character of the Cabin John community should be retained by keeping the existing scale and type of housing along with the semi-rural, wooded environment,’” and that “[t]he addition proposed in this application would still be within the scale and type of housing within the Cabin John area in general and the Riverside Avenue area in particular.” See Exhibit 3.

7. At the hearing, the Petitioner testified that the proposed second story addition was part of the original plans for this house, which was built in 2000 in the location of a previously-existing house, but that this second story was not constructed at that time because of cost. He testified that the wing of the house over which the proposed second story addition is to be built has high ceilings which will be lowered when the second floor is added, reducing the height increase that would otherwise be attributable to the addition. He further testified that locating the addition over the existing wing of the house will minimize its impact, and that locating the new space elsewhere on the property would have a greater impact on the environment and on neighboring properties.

The Petitioner testified that he had gone to the neighbors directly behind the subject property and to its east and west, and that he had received letters of support from all of them. See Exhibit 14. He testified that the property to the west of the subject property is located on a different street, and that a 40-foot tall stand of bamboo blocks any view of the Petitioner’s house from that property. The Petitioner testified that the topographical challenges and stream that occasioned the need for the first variance have not changed since that variance was granted. In response to a Board question regarding

his garage, the Petitioner testified that the garage was fully and legally permitted, noting the presence of a WSSC easement on the property in the course of his explanation. Finally, the Petitioner testified that the grant of the requested variance will not be adverse to the use and enjoyment of neighboring properties, and that the variance can be granted without substantial impact to the intent and integrity of the applicable master plan.

8. Counsel for the Petitioner stated that the environmental factors that supported the Board's grant of variance relief in Case No. A-5135 continue to exist.

## CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

Based on the evidence and testimony of record, the Board finds, as it had in Case No. A-5135, that the area available for development on the subject property is significantly constrained by severe slopes, the existing stream, and a WSSC easement. See Exhibits 3, 7, and 13. The Board finds that these conditions combine to create difficulties in the siting of any new construction on the subject property, and constitute an extraordinary condition that is peculiar to this property, in satisfaction of this element of the variance test.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, based on the Statement, that the severe slopes, stream, and WSSC easement existed when the previous variance was granted, and have not changed since that time, and that the Petitioner, who inherited this property from his grandmother, is not responsible for their presence on the property. See Exhibit 3.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested five (5) foot variance is the minimum necessary to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the additional limitations on the resultant buildable area of this property which arise from its steep slopes, stream, and WSSC easement. The Board further finds that the requested variance is minimal in that it will not increase the footprint of the existing home. Thus the Board finds that this element of the variance test is satisfied.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to construct this addition continues the residential use of this home, and per the assertions made in the Statement and at the hearing, can be granted without substantial impairment to the Bethesda Chevy Chase Master Plan (1990).

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, per the Statement, that the subject property is well-buffered from its neighbors and "fairly isolated," as indicated in paragraph 2 under Evidence Presented. Per the Statement, the Board further finds that the closest neighbor to the subject property is the neighbor to the rear, and the subject property is buffered from that property by "significant landscaping." Finally, the Board notes the testimony of the Petitioner that the view of the neighbor to the west is screened by a tall stand of bamboo, and further notes that the record contains letters of support from neighboring property owners. See Exhibit 14. In light of the foregoing, the Board finds that the proposed second story addition will not be adverse to the use and enjoyment of abutting or confronting properties. See Exhibit 3.

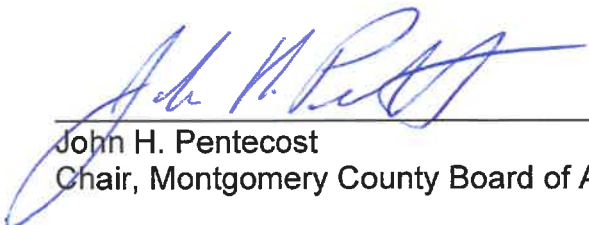
Accordingly, the requested five (5) foot variance from the front lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record to the extent that such testimony and evidence are mentioned in this opinion; and

2. Construction shall be in accordance with Exhibits 4(a), 4(c), and 5(a)-(c).

Therefore, based upon the foregoing, on a motion by Katherine Freeman, seconded by Stanley B. Boyd, Vice Chair, with John H. Pentecost, Chair, Bruce Goldensohn, and Jon W. Cook in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 19th day of June, 2019.



Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.